IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

CRL.A.No. 825 of 1999()

AGAINST THE JUDGEMENT/ORDER IN CRL.M.C.5452/1999 Dated 06/11/1999
CC.27/1998 of ADDL.CHIEF JUDICIAL MAGISTRATE (E.O),ERNAKULAM

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APPELLANT/COMPLAINANT:

ROYAL MARKETING & DISTRIBUTORS,
E.V.M. BUILDINGS, COLLEGE JUNCTION,
KOTHAMANGALAM, REP. BY ITS DULY
AUTHORISED AGENT SHRI. K.M.GEORGE ROY,
S/o.K.J.MATHEW, KALLARACKAL HOUSE,
ELLUMPURAM, MUTTOM P.O., THODUPUZHA,
IDUKKI DISTRICT.

BY ADV. SRI.C.J.JOY

RESPONDENTS/ACCUSED:

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1. M/s. CENTURY PLASTICS INDUSTRIES, REP.BY ITS MANAGING PARTNER SRI.GEORGE DANIEL, THEKKEKKARA P.O., ALLEPPEY DISTRICT.

2. SRI.GEORGE DANIEL, MANAGING PARTNER, M/s. CENTURY PLASTICS INDUSTRIES, THEKKEKKARA P.O., ALLEPPEY DISTRICT.

3. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

R3 BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/06/2007, ALONG WITH CRL.A.Nos.826 & 841 OF 1999, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN,J

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Crl.Appeal Nos. 825, 826 & 841 of 1999

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Dated this the 4th Day of June, 2007

JUDGMENT

These three appeals are filed against the respondents and notices were issued on 29.03.2000. But the appeal remains defective as the services to the respondents have not been completed. When these appeals came today, I heard the counsel appearing for the appellant and perused the orders impugned and the records made available to this court. The impugned judgments are under Section 256(1) Cr.P.C. The only reason stated in the order is the absence of the complainant. At the same time this court has found that the counsel appearing for the appellant has already filed a petition before the court below to excuse the absence of the complainant before the court. In the above circumstances, these appeals are having merits. This court is of the view that the non service of the notice to the respondents is not a reason to interfere with the order.

2. It appears that the learned Magistrate had considered only the absence of the complainant before the court. The orders impugned would not show that the same have been

passed in tune with the dictums laid down by this Court in the judgment reported in **Don Bosco v Partech Computers Ltd (2005(2) KLT 1003)** and **G.F.S Chit & Loans (p) Ltd. v Rajesh (2006(3) KLT 825)** and also the dictum laid down by the Apex Court in the judgment reported in **Associated Cement Co. Ltd v Keshavanand (1998(I) KLT 179)**. In the first two cases this Court had categorically held that the court shall not invoke the jurisdiction under Section 256(1) without applying its judicial discretion. Para 17 of the Apex Court judgment (supra) reads as follows:

> 17. "Reading the section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice".

Applying the above judicial pronouncements and the facts and circumstances of the case, this Court is of the view that these appeals can be disposed of without serving notice to the respondents. Hence, these appeals are allowed. The judgments are set aside and the matters are remitted back to the trial court. The trial court is directed to consider the matter afresh from the stage of the complaint on issuing fresh notices to the respondents. The appellant shall appear before the court on 21st July, 2007.

K.THANKAPPAN,JUDGE

dvs